IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 561 of 1992

For Approval and Signature:

HON'BLE MR.JUSTICE J.M.PANCHAL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

PANKAJKUMAR ANIRUDH BAROT

Appearance:

1. Criminal Appeal No. 561 of 1992

MR KC Shah, APP, for Appellant-State.

MR AD SHAH, advocate for Respondent

CORAM : HON'BLE MR.JUSTICE J.M.PANCHAL

Date of decision: 25/11/2004

ORAL JUDGEMENT

Instant appeal filed under Section 378 of the

Code of Criminal Procedure, 1973, is directed against judgment dated March 30, 1992 rendered by the learned Judicial Magistrate, First Class, Idar, in Criminal Case No.907 of 1988, by which the respondent is acquitted of the offences punishable under Sections 326 & 447 of the Indian Penal Code and Section 135 of the Bombay Police Act.

2. Complainant Ambalal Kuvarji Barot is a resident of village Nani Vadol, Taluka : Idar, District : Sabarkantha. The respondent is his nephew. The name of brother of complainant is Bhanuprasad Kuvarji Barot. The residential houses of Bhanuprasad and father of the respondent are situated adjoining each other. There is a piece of land in front of those houses. Bhanuprasad had applied to Panchayat to allot the said piece of land to him, which was objected to by the father of the respondent. However, the land was allotted to Bhanuprasad. Because of allotment of land to Bhanuprasad, there was bitterness between Bhanuprasad and father of the respondent. The incident in question took place on June 29, 1988 at about 9.30 A.M. in the morning in open space in front of house of Bhanuprasad. It is the case of the prosecution that an altercation took place between Bhanuprasad and father of the respondent, as a result of which the respondent was agitated and caused injury to Bhanuprasad on his hand by means of a dharia. On hearing the altercation, wife of Bhanuprasad came out of her house and witnessed the incident. She, in turn, informed about the assault on her husband by the respondent to complainant Ambalal, who lodged complaint with Jadar Police Station. The said complaint was investigated by Mohmed Nurabhai Sonesara, who was then Police Sub Inspector of the Police Station. He drew panchnama of place of incident and recorded statements of those persons who were found to be conversant with the facts of the case. The injured was referred to Civil Hospital, Himatnagar for treatment, from where he was shifted to Civil Hospital, Ahmedabad. The respondent was arrested and dharia used in commission of crime was discovered pursuant to disclosure statement made by the respondent. Bloodstained clothes of the injured were also seized. The incriminating articles seized during the course of investigation were sent to Forensic Science Laboratory for analysis. On completion of investigation, the respondent was chargesheeted in the Court of learned Judicial Magistrate, First Class, Idar for alleged commission of offences punishable under Sections 326 & 447 of I.P.C. read with Section 135 of the Bombay Police Act.

3. Charge at Exh.14 was framed against the respondent for commission of offences punishable under Sections 447 & 326 I.P.C. and Section 135 of the Bombay Police Act. The charge was read over and explained to the respondent, who pleaded not guilty to the same and claimed to be tried. The prosecution, therefore, examined (1) complainant Ambalal Kuvarji as PW.1 at Exh.19, (2) Anandiben as PW.2 at Exh.22, (3) Shivlal as PW.3 at Exh.23, (4) Jitendra as PW.4 at Exh.26, (5) Punjabhai as PW.6 at Exh.29, (6) Natvarsinh as PW.7 at Exh.30, (7) J.J.Mehta as PW.8 at Exh.32, (8) Mohmedbhai Sonesara as PW.9 at Exh.39, and (9) Jayanand as PW.10 at Exh.42, to prove its case against the respondent. The prosecution also produced documentary evidence such as F.I.R. lodged by Ambalal at Exh.20, panchnama of place of occurrence at Exh.24, panchnama of seizure of dharia at Exh.25, certificate of injury sustained by Bhanuprasad at Exh.33, report of Serologist at Exh.38, injury certificate of Bhanuprasad issued by Medical Officer, Civil Hospital, Himatnagar at Exh.43 etc., in support of its case against the respondent.

4. After recording of evidence of prosecution witnesses was over, the learned Magistrate explained to the respondent the circumstances appearing against him in the evidence of prosecution witnesses, and recorded his further statement as required by Section 313 of the Code of Criminal Procedure, 1973. In his further statement, it was pleaded by the respondent that he was falsely implicated in the case due to enmity between the injured and him, as there was dispute between the two regarding open land in front of their houses. He produced written statement at Exh.46 and stated that cactus hedge erected by him was being cut by the injured and his son Narendrabhai, which was objected to by him and, therefore, both of them were provoked and Narendrabhai, who is son of injured Bhanuprasad, had aimed dharia blow at him to cause injury, and meanwhile Bhanuprasad, who was agitated, had raised his hand and, therefore, blow of dharia had fallen on his hand, but no injury was caused by him to Bhanuprasad. In support of the claim advanced by him in his written statement, he examined Rupsinh Jehsinh as defence witness No.1 at Exh.48. On appreciation of evidence, the learned Magistrate has acquitted the respondent by judgment dated March 30, 1992, giving rise to instant appeal.

5. This Court has heard Mr.K.C.Shah, learned A.P.P. as well as Mr.A.D.Shah, learned counsel of the respondent, at great length and in detail. This Court has also undertaken a complete and comprehensive

appreciation of all vital features of the case and the entire evidence on record with reference to broad and reasonable probabilities of the case.

6. After analysing, sifting and assessing the evidence on record with particular reference to its trustworthiness and truthfulness by a process of dispassionate judicial scrutiny, this Court finds that complainant Ambalal is not an eye witness on his on saying. Therefore, his evidence is of little assistance to the prosecution. It is relevant to notice that as per the case of injured Bhanuprasad, his right hand was caught hold of by father of the respondent after which the respondent had caused injury on his right hand by means of dharia. However, Anandiben, who is wife of injured Bhanuprasad and claims to be an eye witness, does not refer to presence of father of the respondent at all. It is relevant to notice that as per the prosecution, the incident in question was witnessed by (1) Amarabhai, (2) Narendrakumar, (3) Anandiben i.e. wife of injured Bhanuprasad, (4) Punjabhai Makwana, (5) Mayaben, who is daughter of injured Bhanuprasad, (6) Rupsinh Jehsinh, who is examined in this case as defence witness No.1, (7) Manilal Damodardas Barot, and (8) Bharatkumar Natvarlal Barot, but except some few witnesses, others have not been examined at all for the reasons best known to the prosecution, though they were cited as witnesses. As observed earlier, injured Bhanuprasad has mentioned in his testimony before the Court that his right hand was caught hold of by father of the respondent, after which injury on his right hand was caused by the respondent by means of a dharia. However, father of the respondent is not an accused in this case. It means that an obvious attempt was made by the injured to implicate the father of the respondent falsely and he has exaggerated the facts. The testimony of investigating officer would indicate that he had recorded statement of injured wherein it was mentioned by him that mother of the respondent and his brother Ashokbhai were abusing him, whereas his right hand was held by father of the respondent. Thus, at different stages, different stories of the incident have been mentioned by injured Bhanuprasad and, therefore, though he is injured witness, his testimony becomes unreliable. It is true that Court should make an attempt to separate truth from falsehood to ascertain true facts, but doctrine of separation of grain from chaff does not apply when grain is not separable from chaff. When it is not possible to separate truth from falsehood, because truth and falsehood are inextricably mixed up, then in the process of separation, Court will have to reconstruct an

absolutely new case for the prosecution by divorcing the essential details of the prosecution case completely from the context, which is not permissible under the law. Here, in this case, truth and falsehood in the evidence of injured are so intermingled that it is impossible to separate them and, therefore, the testimony of the injured, which normally should be accepted, will have to be rejected as unreliable. The testimony of investigating officer would indicate that 20 to 25 persons, who are on good terms with the injured and the complainant, had submitted an application against the father of the respondent that he was possessing a revolver illegally, pursuant to which the police officer had obtained search-warrant and searched his premises, but no revolver was found in spite of extensive and meticulous search. The evidence on record shows that quarrels between the families of the injured and the respondent are going on since 1960 and there was acute bitterness between the two families. The bitterness was so acute that injured and his relatives had not even participated in the marriage of sister of the respondent. Except highly interested witnesses, who were totally on inimical terms with the father of the respondent, no reliable independent witness could be examined by the prosecution to prove the charges levelled against the respondent. The learned Magistrate has considered entire evidence on record very minutely and recorded judgment of acquittal which runs into 50 pages. It is relevant to notice that in this case the respondent has examined an eye witness as his defence witness. The said witness has clearly stated in his testimony that when the respondent and his father had protested cutting of cactus hedge by the injured and his son, the injured and his son were agitated, as a result of which son of the injured had aimed a dharia blow at the respondent, but the injured, who was agitated, had raised his hand and, therefore, the blow had fallen on his hand. Though this witness has been cross-examined in detail, nothing could be brought on record to impeach his credibility. It is well settled that the testimony of defence witness must be given the same weightage as that of prosecution witness and in absence of good reasons, the same cannot be brushed aside. The testimony of defence witness probablies the defence pleaded by the respondent in his written statement. In spite of best efforts made by learned A.P.P., it could not be successfully demonstrated before this Court that the reasons assigned by the learned Magistrate for acquitting the respondent are either perverse or contrary to evidence on record. The reasons of acquittal recorded by the learned Magistrate are borne out from the evidence on record and this Court concurs

with the findings of facts recorded by the learned Magistrate.

7. This is an acquittal appeal in which Court would be slow to interfere with the order of acquittal. Infirmities in the prosecution case go to the root of the matter and strike a vital blow on the prosecution case. In such a case, it would not be safe to set aside the order of acquittal, more particularly when the evidence has not inspired confidence of the learned Magistrate who had opportunity to observe demeanour of the witnesses. As this Court is in general agreement with the view expressed by the learned Magistrate, this Court does not think it necessary either to reiterate the evidence of prosecution witnesses or to restate the reasons for acquittal given by the learned Magistrate and in the opinion of this Court, expression of general agreement with the view taken by the learned Magistrate would be sufficient in the facts of the case. This is so, in view of the decisions rendered by the Supreme Court in the cases of (1) Girija Nandini Devi & ors. v. Bijendra Narain Chaudhary, A.I.R. 1967 S.C. 1124, and (2) State of Karnataka v. Hema Reddy and another, A.I.R. 1981 S.C. 1417. On overall appreciation of evidence, this Court is satisfied that there is no infirmity in the reasons assigned by the learned Magistrate for acquitting the respondent. Suffice it to say that the learned Magistrate has given cogent and convincing reasons for acquitting the respondent. The learned Additional Public Prosecutor has failed to convince this Court to take the view contrary to the one already taken by the learned Magistrate and, therefore, the appeal is liable to be dismissed.

For the foregoing reasons, the appeal fails and is dismissed. Muddamal to be disposed of in terms of directions given by the learned Magistrate in the judgment which is impugned in the appeal.

(J.M.Panchal,J.)

(patel)